

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Case No.: 1-02-17966-jbr

BENJAMIN HIRSCH,

Chapter 7

Debtor.

-----X
NACHAMA HIRSCH,

Plaintiff,

Adv. Proc. No.: 1-07-01139-jbr

-against-

BENJAMIN HIRSCH,

Defendant.

-----X
Appearances:

Gary M. Kushner, Esq.
Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP
Attorneys for Plaintiff
330 Old Country Road
P.O. Box 31
Mineola, New York 11501

Nachama Hirsch
945 East 27th Street
Brooklyn, New York 11210

**DECISION AND ORDER ON MOTION TO WITHDRAW AS ATTORNEY FOR
NACHAMA HIRSCH**

WHEREAS, on April 16, 2007, Nachama Hirsch (the “plaintiff”), represented by Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, LLP, filed a complaint commencing this adversary proceeding against the debtor Benjamin Hirsch (the “defendant”); and

WHEREAS, on November 27, 2007, the Court issued an Order to Show Cause

Why the Court Should Not Dismiss the Plaintiff's Complaint for Failure to State a Claim, and held a hearing on April 1, 2008; and

WHEREAS, on September 17, 2009, Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP (the "Forchelli Law Firm") filed a Motion to Withdraw as Attorney for Nachama Hirsch; and

WHEREAS, on September 30, 2009, the Court issued an Order on Hearing for Order to Show Cause Why the Complaint should not be Dismissed and granted the motion to amend the Complaint; and

WHEREAS, on October 8, 2009, the Court held a hearing and denied the Forchelli Law Firm's Motion to Withdraw as Attorney in this adversary proceeding; and

WHEREAS, on October 19, 2009, Forchelli Law Firm filed a Notice of Appeal to United States District Court, Eastern District of New York and on June 23, 2010, the District Court, issued an Order for Remand for a further development of the factual record; and

WHEREAS, on August 20, 2010, the Court held an evidentiary hearing and took the matter under advisement; and

UPON the due consideration of the arguments of counsel, the Declaration of Gary M. Kushner, dated August 3, 2010, in further support of the application to withdraw as counsel for Nachama Hirsch and the exhibits annexed thereto, the evidentiary hearing conducted on August 20, 2010, the testimony of witnesses, and an examination of the papers submitted into evidence, and upon all of the pleadings and proceedings heretofore had herein, this Court finds

THAT counsel should not be allowed to withdraw at this time; and

THAT Mrs. Hirsch presently lacks the ability to pay her financial obligations and

has not deliberately disregarded her financial obligations. As the District Court pointed out, simple nonpayment of legal fees and failure to comply with the retainer agreement is not a proper basis for the withdrawal of counsel. United States v. Stein, 488 F.Supp.2d 370, 373 (S.D.N.Y.2007). Mrs. Hirsch understands and acknowledges her obligation to pay for the services rendered to her, but at this time she has no meaning and fund to do so; and

THAT Mr. Kushner either was aware of or should have known Mrs. Hirsch's financial circumstances when he agreed to undertake the representation in this adversary proceeding; and

THAT to the extent there are differences which may be interpreted to be irreconcilable and potential conflicts between the plaintiff and Mr. Kushner and the Forchelli Law Firm, limited services of amending the Complaint can be provided very quickly and with moderate expenses and the Court believes that there is no need of extensive cooperation of the plaintiff with her counsel at this juncture of the case. As an attorney, Mr. Kushner is an officer of the court and he is obliged to render services even over his objection and without fee. Id.

THAT considering the history of this case, the withdrawal of the counsel at this stage of the proceeding, until the amended complaint is filed, would be more prejudicial and detrimental to Mrs. Hirsch, than to Mr. Kushner and the Forchelli Law Firm.

Therefore, it is hereby

ORDERED, that upon authorization by Mrs. Hirsch, Mr. Kushner and the Forchelli Law Firm shall file on Mrs. Hirsch's behalf an amended complaint in this adversary proceeding on or before October 13, 2010; and it is further

ORDERED, that upon filing the amended complaint, Mr. Kushner and the

Forchelli Law Firm may renew its application to be relieved as the counsel for Nachama Hirsch.

Dated: Brooklyn, New York
September 14, 2010

s/ Joel B. Rosenthal
Honorable Joel B. Rosenthal
United States Bankruptcy Judge